

RESPONSE UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE

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**REMARKS/ARGUMENTS****FEB 12 2008**

Claims 1, 4, 7-9, 11, 14, 15, 17-19, 21, and 24-34 are currently pending in this continuation application. The Examiner finally rejected all of the pending claims in a Final Office Action mailed December, 12, 2007. Applicants have amended the claims to address the Examiner's comments, and request reconsideration of the claims in view of those amendments and in view of the following remarks. The Amendment is mailed on February 12, 2007, which is within two months of the mailing date of the Final Office Action.

**A. Rejection Of Claims 1, 4, 7, 9, 11, 14, 15, 18, 19, 21, 24, 25, 27-29, 31, and 34 Under 35 U.S.C. § 103(a)**

Claims 1, 4, 7, 9, 11, 14, 15, 18, 19, 21, 24, 25, 27-29, 31, and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,846,262 issued December 8, 1998 to Sayama et al. ("Sayama") in view of U.S. Statutory Invention Registration No. H1674 published August 5, 1997 to Ames et al. ("Ames"). In the "Response to Arguments" section of the Final Office Action, the

Examiner states that:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the attachment panels consist essentially of the elastomeric nonwoven materials such that no separate fastening materials or fastening elements, loop material for example, are formed from or attached to the attachment panels) are not recited in rejected claims(s).

Applicants respectfully assert that the Examiner continues to fail to give proper weight to the exclusionary phrase "consisting essentially of" in evaluating the claims. Each of the currently pending independent claims (claims 1, 9, and 19) requires that each attachment panel consist essentially of an elastomeric nonwoven material, and each of which defines an inner attachment surface. It is widely accepted that the transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. MPEP 2111.03. Applicants have clearly indicated in the specification what the basic and novel characteristics of the presently claimed invention are with respect to this claim phrase: "In particular embodiments, the attachment panels consist essentially of the elastomeric nonwoven materials such that no separate fastening materials or fastening elements, loop material for example, are formed from or attached to the attachment panels." Specification, page 3, lines 18-21. When the applicant *explicitly* states the meaning that the claim terms are intended to have, the claims

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are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 13 USPQ 2d 1320, 1322 (Fed. Cir. 1989) (emphasis added). MPEP section 2173.05(a) likewise states: ***When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning...*** (emphasis added; citations omitted).

The Examiner's reliance on *In re Van Geuns* is misguided. In that case, the court cited *In re Zletz*, 893 F.2d 319, 321 (Fed.Cir.1989), for the proposition that "limitations are not to be read into the claims from the specification." However, *Zletz* goes on to clarify that "when the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz* at 321 (emphasis added). This principle is captured in the MPEP section cited above. *In re Van Geuns* certainly does not stand for the proposition that a patent applicant can never act as his or her own lexicographer, as the Examiner's position would suggest.

However, to expedite the prosecution of this application, Applicants, via the present Amendment, now explicitly set forth in the independent claims the "features upon which applicants rely" in the independent claims. Specifically, each independent claim now recites that "no separate fastening elements are bonded to the elastomeric nonwoven attachment panels." Applicants believe that this change addresses the Examiner's concern, and places the application in condition for allowance.

### **C. Conclusion**

The application now contains claims 1, 4, 7-9, 11, 14, 15, 17-19, 21, and 24-34 which are believed to be in condition for allowance in view of the present amendments and foregoing remarks.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7844.

Respectfully submitted,  
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